



DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA-2021-0074; Airspace Docket No. 20-ANE-5]

RIN 2120-AA66

Amendment of Restricted Areas R-4102A and R-4102B; Fort Devens, MA

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This action modifies restricted areas R-4102A and R-4102B at Fort Devens, MA, by amending the boundaries of the areas to align with the boundaries of the Fort Devens' installation property; and by changing the time of designation to reflect actual usage of the airspace.

DATES: Effective date: 0901 UTC, July 14, 2022.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Authority for this rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes restricted area airspace at

Fort Devens, MA, to enhance aviation safety and accommodate essential U.S. Army training activities.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA-2021-0074 in the *Federal Register* (86 FR 17555; April 5, 2021), proposing to modify restricted areas R-4102A and R-4102B at Fort Devens, MA, to update the time of designation and the lateral boundaries of the areas. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received from an individual commenter.

Discussion of comment

The commenter expressed concern about FAA's determination of "no significant impact" with regard to this action. The commenter likened it to FAA's decision in the case of Moore Army Airfield in which the commenter stated the 60 days comment period was waived. Moreover, the commenter stated that the public lacked the benefit of a noise impact study. Moore Airfield was closed during the 1990s and is now used for auto racing and for state police training. Finally, the commenter stated that they "disagree with lifting the restrictions that are currently over Oxbow Wildlife Refuge" as "[p]ropeller planes are dumping noise and leaded aviation fuel emissions."

In this case, the Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) were available for review and comment for 30 days, beginning June 22, 2018, and ending July 23, 2018. Copies of the EA and Draft FNSI were made available on the official Fort Devens website and printed copies were also made available at four local libraries: the Ayer Public Library, the Hazen Memorial Library in Shirley, the Harvard Public Library, and the Thayer Memorial Library in Lancaster. The Army received responses from the Massachusetts Historical Commission and Fitchburg Municipal Airport during the 30-day public review period. The Army carefully read and considered all comments received. Moreover, the EA's section on

Biological Resources found that although biological communities are found in the surrounding areas, no noise impacts are anticipated on these communities because no changes are proposed to the types of aircraft or types and number of operations conducted within the airspace.

With regard to the commenter's final point, the current restricted area configuration does infringe on the southernmost part of the Refuge. However, this area is not available for use by the military for environmental reasons. Therefore, there is no justification for retaining restricted airspace over that location. Restricted areas are only designated when necessary to contain and segregate activities that would pose a hazard to aviation rather than address environmental concerns. The Oxbow Refuge is identified on Visual Flight Rules (VFR) aeronautical charts for pilot awareness. An advisory note on the chart requests that pilots maintain a minimum flight altitude of 2,000 feet above the ground if overflying the Refuge and similar sensitive areas.

The Rule

This action amends 14 CFR part 73 by modifying the time of designation, and the boundaries of restricted areas R-4102A and R-4102B at Fort Devens, MA. The current time of designation is "0800 to 2200 Saturday, local time; other times by NOTAM issued 24 hours in advance." This designation does not reflect the actual routine daily use of the airspace necessary to meet the training requirements at Fort Devens. The FAA is amending the time of designation to read: "Intermittent, 0730 to 2200 local time, daily; other times by NOTAM issued 24 hours in advance." This change provides more accurate information to the aviation community about the current routine use of the airspace, and it eliminates the administrative workload now required to issue daily NOTAMs to activate the restricted areas.

The FAA is also modifying the boundaries of restricted areas R-4102A and R-4102B by removing sections of the restricted airspace that are not contained within the Fort Devens installation property boundaries. Additionally, this rule slightly expands the restricted areas on the northwest, northeast, and southeast sides to include small parts of the training area that are actually located within the Fort Devens installation property boundaries, but are outside of the

current restricted area boundaries. Taken together, these restricted area boundary changes result in an overall reduction in the size of the restricted areas at Fort Devens. The result is improved functionality of the training area as well as increase safety during training operations.

During periods when the restricted areas are not needed by the using agency, the airspace will be returned to the controlling agency (FAA, Boston Approach Control) for access by other aviation users.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of modifying restricted areas R-4102A and R-4102B at Fort Devens, MA, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5-6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order

1050.1F, paragraph 5-2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study for this rulemaking action. On May 31, 2019, in accordance with FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Paragraph 8-2, *Adoption of Other Agencies' NEPA Documents*, the FAA finalized its adoption Environmental Assessment of the Army's Establishment of Restricted Area Airspace (R-) 4102A/B at U.S Army Garrison Fort Devens, Final Environmental Assessment of *Airspace Change Proposal at U.S. Army Garrison Fort Devens, Massachusetts*. The Army's Final EA analyzed the potential environmental impacts of the proposed establishment of additional restricted area airspace in support of the Army's training exercises. The additional restricted area airspace would lower the risk of encountering non-participating aircraft during those exercises. No changes to the types of aircraft or types and number of operations conducted within the airspace were proposed.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73 - SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 73.41 Massachusetts [Amended]

2. Section 73.38 is amended as follows:

R-4102A Fort Devens, MA [Amended]

Boundaries. Beginning at lat. 42°31'11"N., long. 71°38'29"W.;
to lat. 42°30'55"N., long. 71°37'51"W.;
to lat. 42°30'12"N., long. 71°38'05"W.;
to lat. 42°29'38"N., long. 71°37'41"W.;
to lat. 42°28'21"N., long. 71°39'14"W.;
to lat. 42°28'11"N., long. 71°39'32"W.;
to lat. 42°28'11"N., long. 71°39'38"W.;
to lat. 42°28'15"N., long. 71°39'45"W.;
to lat. 42°28'25"N., long. 71°40'08"W.;
to lat. 42°28'54"N., long. 71°41'00"W.;
to lat. 42°29'08"N., long. 71°41'06"W.;
to lat. 42°29'52"N., long. 71°41'08"W.;
to lat. 42°30'17"N., long. 71°41'29"W.;
to lat. 42°30'19"N., long. 71°41'19"W.;
to lat. 42°30'37"N., long. 71°40'30"W.;
to lat. 42°30'43"N., long. 71°40'17"W.;
to lat. 42°30'52"N., long. 71°40'14"W.;
to lat. 42°30'54"N., long. 71°40'10"W.;
to lat. 42°30'53"N., long. 71°40'02"W.;
to lat. 42°30'48"N., long. 71°39'57"W.;
to lat. 42°30'47"N., long. 71°39'45"W.;
to lat. 42°30'55"N., long. 71°39'31"W.;
to lat. 42°30'58"N., long. 71°39'18"W.;
to lat. 42°30'57"N., long. 71°39'09"W.;
to lat. 42°30'52"N., long. 71°38'42"W.;
to lat. 42°30'58"N., long. 71°38'33"W.;
to lat. 42°31'06"N., long. 71°38'37"W.;
thence to the point of beginning.

Designated altitudes. Surface to, but not including, 2000 feet MSL.

Time of designation. Intermittent, 0730-2200 local time, daily; other times by NOTAM issued 24 hours in advance.

Controlling agency. FAA, Boston Approach Control.

Using agency. Commander, U.S. Army Garrison, Fort Devens, MA.

R-4102B Fort Devens, MA [Amended]

Boundaries. Beginning at lat. 42°31'11"N., long. 71°38'29"W.;
to lat. 42°30'55"N., long. 71°37'51"W.;
to lat. 42°30'12"N., long. 71°38'05"W.;
to lat. 42°29'38"N., long. 71°37'41"W.;
to lat. 42°28'21"N., long. 71°39'14"W.;
to lat. 42°28'11"N., long. 71°39'32"W.;
to lat. 42°28'11"N., long. 71°39'38"W.;
to lat. 42°28'15"N., long. 71°39'45"W.;
to lat. 42°28'25"N., long. 71°40'08"W.;
to lat. 42°28'54"N., long. 71°41'00"W.;
to lat. 42°29'08"N., long. 71°41'06"W.;
to lat. 42°29'52"N., long. 71°41'08"W.;
to lat. 42°30'17"N., long. 71°41'29"W.;
to lat. 42°30'19"N., long. 71°41'19"W.;
to lat. 42°30'37"N., long. 71°40'30"W.;
to lat. 42°30'43"N., long. 71°40'17"W.;

to lat. 42°30'52"N., long. 71°40'14"W.;
to lat. 42°30'54"N., long. 71°40'10"W.;
to lat. 42°30'53"N., long. 71°40'02"W.;
to lat. 42°30'48"N., long. 71°39'57"W.;
to lat. 42°30'47"N., long. 71°39'45"W.;
to lat. 42°30'55"N., long. 71°39'31"W.;
to lat. 42°30'58"N., long. 71°39'18"W.;
to lat. 42°30'57"N., long. 71°39'09"W.;
to lat. 42°30'52"N., long. 71°38'42"W.;
to lat. 42°30'58"N., long. 71°38'33"W.;
to lat. 42°31'06"N., long. 71°38'37"W.;
thence to the point of beginning.

Designated altitudes. 2000 feet MSL to 3995 feet MSL.

Time of designation. Intermittent, 0730-2200 local time, daily; other times by NOTAM issued 24 hours in advance.

Controlling agency. FAA, Boston Approach Control.

Using agency. Commander, U.S. Army Garrison, Fort Devens, MA.

Issued in Washington, DC, on May 3, 2022.

Scott M. Rosenbloom,
Manager, Airspace Rules and Regulations.

[FR Doc. 2022-09921 Filed: 5/6/2022 8:45 am; Publication Date: 5/9/2022]